Office - Supreme Court, U.S.
FILED
JUN 8 1984
ALEXANDER L. STEVAS.
CLERK

No. 83-1832

IN THE

Supreme Court of the United States

October Term, 1983

JIMMIE ALEXANDER,

Plaintiff and Appellant,

vs.

LOS ANGELES COUNTY AND LOS ANGELES COUNTY CIVIL SERVICE COMMISSION,

Defendants and Appellees.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS.

BRIEF FOR DEFENDANTS AND APPELLEES IN OPPOSITION.

DE WITT W. CLINTON,
County Counsel,
DONOVAN M. MAIN,
Assistant County Counsel,
HALVOR S. MELOM,
Deputy County Counsel,
648 Hall of Administration,
Los Angeles, Calif. 90012,
(213) 974-1827,
Attorneys for Defendants and Appellees.

BEST AVAILABLE COPY

14 pp

TABLE OF CONTENTS

	Page
Jurisdiction	1
Questions Presented	1
Statement of the Case	2
Argument: Reasons for Denying the Writ	7
A. The State Court Judgments Are Final and Conclusive and Are Entitled to Full Faith and Credit in the Federal Courts	7
B. The Ninth Circuit Correctly Held That Appellant Was Collaterally Estopped From Contending That He Was "Discharged" Because of His Race in Violation of Title VII	8
C. Collateral Estoppel Precludes Relitigation of Appellant's Due Process Claim	10
Conclusion	10

TABLE OF AUTHORITIES

Cases	Page
Allen v. McCurry (1981) 449 U.S. 90 [101 S.Ct. 411, 66 L.Ed.2d 308]	7, 8
Baker v. Wadsworth (1970) 6 Cal.App.3d 253, 263	8
Dunn v. Simon (1962) 16 App.Div.2d 719, 226 N.Y.S. 2d 812	8
Federated Department Stores, Inc. v. Moitie (1981) 452 U.S. 394, 401 [69 L.Ed 2d 103, 101 S.Ct. 2424]	10
Kachig v. Boothe (1971) 22 Cal.App.3d 626, 632-636	7
Kremer v. Chemical Construction Corp. (1982) 456 U.S. 461 [102 S.Ct. 1883, 1894, 72 L.Ed.2d 262]	8, 9
Price v. Sixth District Agricultural Assn. (1927) 201 Cal. 502, 515	9
Wilson v. State Personnel Board (1980) 113 Cal. App.3d 312	8
Rules	
Federal Rules of Civil Procedure, Rule 12(b)(6)	6
Los Angeles Civil Service Commission, Rule 19.13	3
Statutes	
California Code of Civil Procedure, Secs. 1084-1097	9
California Code of Civil Procedure, Sec. 1085	7
Los Angeles County Administrative Code, Sec. 33 (County Ordinance No. 4099)	1, 2, 3
United States Code, Title 28, Sec. 1254	1
United States Code, Title 28, Sec. 1257(3)	10
United States Code, Title 28, Sec. 1738	1, 7, 8, 11
United States Code, Title 42, Sec. 2000e	6

No. 83-1832

IN THE

Supreme Court of the United States

October Term, 1983

JIMMIE ALEXANDER,

Plaintiff and Appellant,

vs.

LOS ANGELES COUNTY AND LOS ANGELES COUNTY CIVIL SERVICE COMMISSION,

Defendants and Appellees.

BRIEF FOR DEFENDANTS AND APPELLEES IN OPPOSITION.

Jurisdiction.

The petition for a writ of certiorari meets the literal requirements of paragraph (1) of Section 1254 of Title 28 of the United States Code. Respondents will demonstrate, however, that the questions presented — especially in view of the facts of the case — do not merit the granting of a discretionary hearing by this Honorable Court.

Questions Presented.

1. Is Appellant collaterally estopped under 28 U.S.C. Section 1738 from contending that he was "discharged" from employment with the County of Los Angeles because of his race?

2. Is Appellant collaterally estopped from contending that Section 33 of the Los Angeles County Administrative

Code (County Ordinance No. 4099) is unconstitutional, either generally or as applied to Appellant?

Statement of the Case.

The operative facts of the dispute, as determined by way of final judgment on the merits rendered by the courts of the State of California, are as follows:

> "Alexander, a county employee since 1961, last held the position of appraiser in the Office of the County Assessor. On the morning of 5 July 1977, Alexander informed the assessor's office that he would be absent from work that day because of a stomach illness. Thereafter, Alexander never returned to work and never requested further authorization for his absence. On July 15 the personnel officer for the assessor's office sent a letter to Alexander seeking verification that his absence since July 6 was due to continued illness, and requesting the anticipated date of his return to work. Alexander did not respond. On August 17 the personnel officer sent a second letter advising Alexander that if he did not submit to the assessor's office by August 23 a doctor's statement about the nature of his illness and the date of his anticipated return to work, he would thereafter be considered absent without pay. Having received no response to its inquiries, on August 25 the personnel officer sent a third letter informing Alexander that he was considered absent without pay as of August 24, and again instructing Alexander to submit to the assessor's office a doctor's statement about the nature of his illness and the anticipated date of his return to work. Alexander again failed to respond, and on August 30 the personnel officer sent a fourth letter warning Alexander that if the assessor's office did not receive medical vertification of his illness by September 6 he would

be deemed to have impliedly resigned his position under section 33 of the Los Angeles County Administrative Code as absent without authorization.

"Section 33 states that an employee is deemed to have impliedly resigned his position with the County if he is absent without prior authorization for a period of three consecutive working days. The statute further provides that the employee may be reinstated by his employing department if he requests such reinstatement within 20 days of the effective date of his implied resignation, and if the department finds that there is good cause for reasons beyond the employee's control which excuse his absence without prior authorization. If after a timely request, the department refuses to reinstate the employee, or if the employee alleges fraud, duress, or undue influence by the appointing officer of his department or by the County in circumstances causing his implied resignation, the employee may then petition the Commission for a hearing. A hearing will be granted only if the employee sets forth sufficient facts in his petition to substantiate a claim of either (1) fraud, duress, or undue influence, or (2) good cause for reasons beyond his control excusing his absence without authorization (Los Angeles Civil Service Commission, rule 19.13.)

"On September 6 still having received no response from Alexander, the assessor's office notified Alexander that he had been deemed to have impliedly resigned his position and advised that if he wished to be reinstated he would have to submit a written statement within 20 days to the office's Director of Real Property Appraisals, detailing specific circumstances of his absence and the reason for his failure to respond to any of the office's letters.

"On September 14 Alexander sent a letter to the Office of the County Counsel requesting that it order the assessor's office to reinstate him. The County Counsel's Office replied that Alexander should request reinstatement from the assessor's office itself on or before September 26. However, rather than request reinstatement from the assessor's office as he was directed to do, on October 2 Alexander requested the Commission to order the assessor's office to reinstate him. On October 31 Alexander's attorney asked the Commission to grant his client a hearing on the issue of his implied resignation. On December 21 the request was withdrawn without prejudice in order to permit Alexander, who still had never contacted the assessor's office, to request reinstatement from that office. Finally, on December 27 Alexander wrote to the assessor's office Director of Real Property Appraisals and requested reinstatement. But Alexander failed to include in his request for reinstatement any explanation for his failure to obtain authorized absence, to respond to the office's inquiries, or to submit a timely request for reinstatement. On January 16 the Director sent a letter to Alexander requesting an explanation. On January 22 Alexander's attorney informed the assessor's office that he was advising his client not to provide the requested explanation, and demanded either rejection or approval of the request for reinstatement. On January 31 the assessor's office rejected the request for reinstatement. Alexander then renewed his request for a hearing before the Commission. On June 21, after reviewing the materials submitted, the Commission denied the request.

"On 21 August 1978, Alexander petitioned the superior court for mandate to compel the Commis-

sion to conduct a hearing into his implied resignation. On 7 December 1978, the court found that the Commission acted within its discretion in refusing Alexander's request for a hearing, and it denied the petition for mandate."

On December 4, 1979, the Court of Appeal of the State of California, Second Appellate District, Division Two, affirmed in an unpublished opinion the judgment of the superior court. The state appellate court held, in relevant part:

"On appeal, Alexander asserts he was entitled to a hearing as a matter of due process, and cites *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, in support of his contention. In *Skelly* the Supreme Court held that because a permanent state employee has a property interest in the continuation of his employment, he is entitled to the benefit of certain procedural safeguards (not necessarily including a full evidentiary hearing) prior to his disciplinary removal. But Alexander was not discharged. Alexander impliedly resigned his position and doing so abandoned his right to continued employment. (See *Baker v. Wadsworth* (1970) 6 Cal. App.3d 253, 262-263.) The procedural safeguards recognized in *Skelly* are therefore not applicable, and the only issue is whether the Commission acted within its discretion in denying his petition for a hearing. For two months Alexander failed to report to work, failed to request authorization for his absence, and failed to respond to his employer's inquiries. He then neglected to make a timely request for reinstatement and when given an extended opportunity to do so, refused to provide any explanation for his conduct. His petition for hearing did not state any facts that would substantiate a claim

> that there was good cause for reasons beyond his control which would excuse his unauthorized absence. We agree with the trial court that the Commission acted within its discretion in denying Alexander's request for a hearing."

Appellant's petition for hearing before the California Supreme Court was denied on January 30, 1980. His petition for certiorari was denied by this Honorable Court on June 16, 1980 (447 U.S. 924), and rehearing was denied on September 17, 1980. (448 U.S. 918.) Judgment denying Appellant's subsequent *pro se* petition to the California Superior Court to vacate its prior judgment "... on the grounds, *inter alia,* that said judgment entered as the result of misrepresentations by ... [opposing] counsel and bias on the part of the trial judge" was entered on June 29, 1981, and was affirmed on appeal May 26, 1982. The California Supreme Court denied hearing in that matter on July 22, 1982.

On July 30, 1982, Appellant filed the instant *pro se* complaint in the federal district court, alleging racial discrimination under Title VII. (42 U.S.C. § 2000e *et seq.*) Judgment granting defendants' motion to dismiss pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure was entered on November 10, 1982, on collateral estoppel grounds. On November 3, 1983, the United States Court of Appeals for the Ninth Circuit affirmed; on February 10, 1984, Appellant's petition for rehearing was denied.

ARGUMENT: REASONS FOR DENYING THE WRIT.

A. The State Court Judgments Are Final and Conclusive, and Are Entitled to Full Faith and Credit in the Federal Courts.

Appellant was initially represented by counsel before the County's Civil Service Commission, the California Superior Court and the California Court of Appeal. The Superior Court, acting on Appellant's petition for traditional mandamus (Ca. Code Civ. Proc. § 1085), received evidence, heard argument and issued findings of fact and conclusions of law before entering judgment. The petition was denied for the reason, *inter alia*, that Appellant failed to observe his Department's attendance policies and directives, and that Appellant presented nothing to excuse his resulting unauthorized absence or his failure to timely request reinstatement.

Appellant's avenue of appeal was exhausted before this Honorable Court on September 17, 1980. Acting in *pro se*, Appellant returned to the California Superior Court attempting to set aside the judgment by claiming various improprieties on the part of the original trial judge and opposing counsel. Once again, the California Superior Court received evidence, heard argument and issued findings of fact and conclusions of law before entering judgment against Appellant. That judgment, in turn, was appealed as far as the California Supreme Court, and like the first is now final under California law. (*Kachig v. Boothe* (1971) 22 Cal.App.3d 626, 632-636.)

28 U.S.C. § 1738 provides that: "The ... judicial proceedings of any court of any State ... shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State ..." In *Allen v. McCurry* (1981)

449 U.S. 90 [101 S.Ct. 411, 66 L.Ed.2d 308], this Honorable Court made clear under § 1738 that issues resolved in state court proceedings are entitled to collateral estoppel effect in proceedings subsequently brought in the federal courts. *Kremer v. Chemical Construction Corp.* (1982) 456 U.S. 461 [102 S.Ct. 1883, 1894, 72 L.Ed. 2d 262], made equally clear ".... that Title VII did not create an exception to § 1738 ..."

B. The Ninth Circuit Correctly Held That Appellant Was Collaterally Estopped From Contending That He Was "Discharged" Because of His Race in Violation of Title VII.

Alexander claims that he was wrongfully discharged because of his race. The Ninth Circuit, however, properly observed that "..., a California trial court held that he was not discharged but that he instead had impliedly resigned from his position." This distinction is well established under California decisional law. In *Baker v. Wadsworth* (1970) 6 Cal.App.3d 253, 263, the California Court of Appeal, quoting from *Dunn v. Simon* (1962) 16 App.Div. 2d 719, 226 N.Y.S. 2d 812, articulated the distinction between implied resignation and discipline in the public service as follows: " 'Each was designed to provide a separate and distinct method ... for severance of employment, the former by self-abdication and the latter by compulsion after a hearing upon charges of incompetency or misconduct.' " As further observed in *Wilson v. State Personnel Board* (1980) 113 Cal.App.3d 312, the loss of employment by way of implied resignation ". . . is automatic, *not discretionary*, in application." (113 Cal.App.3d at p. 318; emphasis added.)

> "Under collateral estoppel, once a court decides on issue of fact or law necessary to its judgment, that decision precludes relitigation of the same issue on

> a different cause of action between the same parties. (citations.) Thus, invocation of res judicata and collateral estoppel 'relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.' (citation.) When a state court has adjudicated a claim or issue, these doctrines also serve to 'promote the comity between state and federal courts that has been recognized as a bulwark of the federal system.' (citation.)" (*Kremer v. Chemical Construction Corp., supra,* 102 S.Ct. at pp. 1889-1890, fn. 6.)

Appellant's argument against application of these principles consists primarily of an *ad hominem* attack on the integrity of the state courts and opposing counsel. But Appellant offers absolutely nothing to suggest that a trial pursuant to California's traditional mandate statute fails to " ... satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause in order to qualify for the full-faith-and-credit guaranteed by federal law." (*Id.,* see, Ca. Code Civ. Proc., §§ 1084-1097). Indeed, in California " '[i]t is well settled that a final judgment rendered upon the merits of an application for peremptory writ of *mandamus* comes within the principle of *res judicata, ...* ' " (*Price v. Sixth District Agricultural Assn.* (1927) 201 Cal. 502, 515; emphasis theirs.)

It is thus conclusively established that Appellant was not discharged but in fact abandoned his job, and that as a matter of law his resulting loss of employment did not involve the exercise of discretion by his employer. As such, the state court judgments constitute a complete defense to Appellant's belated claim of racially motivated "discharge".

C. Collateral Estoppel Precludes Relitigation of Appellant's Due Process Claim.

This Honorable Court ". . . has long recognized that '[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties.' (citations)." (*Federated Department Stores, Inc. v. Moitie* (1981) 452 U.S. 394, 401 [69 L.Ed.2d 103, 101 S.Ct. 2424].) It makes no difference for *res judicata* and collateral estoppel purposes that the judgment ". . . may have been wrong or rested on a legal principle subsequently overruled in another case." (*Id.* 452 U.S. at p. 398.) " 'A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same [cause of action].' " (*Id.*)

Appellant's due process claim was expressly raised and rejected in the initial state proceedings, and was subject to direct review before this Honorable Court by way of petition for writ of certiorari. (28 U.S.C. § 1257(3).) That petition was denied. As to Appellant, accordingly, the issue is irrevocably final, and cannot be revivified by this collateral action.

Conclusion.

The circumstances leading to Appellant's abandonment of his job consist of a single core of operative facts, which Appellant had a full and fair opportunity to litigate in the state courts. He should not now be permitted to relitigate the matter under the guise of a racial discrimination claim, which is legally inconsistent with those previously established facts. Affording Appellant yet another opportunity to pursue the matter through the

courts would do nothing to serve the policies behind either 28 U.S.C. § 1738 or Title VII. The writ sought should be denied.

Dated: June 7, 1984.

Respectfully submitted,

DE WITT W. CLINTON,
County Counsel,

DONOVAN M. MAIN,
Assistant County Counsel

By HALVOR S. MELOM,
Deputy County Counsel,

Attorneys for Defendants and Appellees.